



## AMC DCSPER News Item



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### LEGAL UPDATE ON MOBILIZATION ISSUES

Addressing legal concerns associated with deployment, particularly civilian deployment issues has always been a big ticket item for the AMC Office of the Command Counsel (AMCCC). Over the years, our efforts have addressed all legal aspects of deployment - not only those dealing with deploying civilians but most recently the use of contractors. Our goal has been to not only ensure legal impediments or problems are identified early for resolution but also as issues surface during deployment, they are addressed quickly and thoroughly. Since commitment to AMC employees has always been important to the Command Group, it is an even greater concern to ensure deployment policies and procedures properly reflect the rights and responsibilities of AMC employees.

Regardless of how often we deploy our civilians, there never seems to be a time when there aren't legal issues that need to be addressed, either old ones that continue to cause concern or new ones that develop based on circumstances unique to that particular deployment. During the AMC Mobilization Symposium held 17-19 September 1996 in Baltimore, Maryland, Ms. Cassandra Tsintolas Johnson, AMCCC, provided the attendees with an Update on Civilian Mobilization Issues - Command Counsel Perspective. The following is a synopsis of legal issues that were discussed:

- o **Staffing the Logistics Support Element (LSE)** - During the January 1995 AMC Mobilization Conference, MG Henderson, AMC DCSLOG, challenged the attendees to develop recommendations as to how AMC could be better prepared to send its deploying civilians with a minimum down time between the time the skills requirement was tasked to AMC and the actual deployment of the civilian filling that requirement. In the past, AMC had relied on civilian volunteers who did not undergo the pre-POMing (Preparation for Overseas Movement) until after the requirement had been made to AMC, which delayed the employees deployment. Satisfying the pre-POMing requirements such as issuance of passports/visas, medical and immunization clearance, and weapons familiarization took time to complete before the employee was ready for the actual deployment.

This concern with cutting the pre-POMing time down surfaced the following issue: Should AMC continue its policy of deploying only civilian volunteers with some degree of down time or was it time to change its policy and shift to pre-identifying certain positions as emergency-essential and assign civilians to those positions as the best way to minimize the pre-POMing delays. This would enhance our ability to be responsive to the missions accomplishment in a more timely manner. These pre-identified positions would be part of the Logistics Support Element (LSE), a modular deployment organization.

It has been AMC's policy to minimize the number of employees who must be involuntarily deployed. When the need for a particular skill arises, management has the authority to direct and assign civilian employees, either voluntarily, or involuntarily or on an unexpected basis to accomplish the DOD mission. AMC is still working the issue of how to best deploy its civilians. Legal issues associated with this matter include which positions/skills can be contracted out versus filled by AMC's civilian employees, how would the rights and responsibilities of those civilians placed in these emergency essential positions (i.e., RIF rights, job descriptions content, and conditions of employment) differ from those who volunteer to deploy, and labor relations implications of these management actions.

- o **Legal Assistance for Deploying Civilians** - suggested language changes to AR 27-3, Army Legal Assistance Program, forwarded by AMCCC to DA were recently incorporated into the revised AR 27-3. They reflect the need to address the distinction between the triggering event for legal assistance applicable to our currently designated emergency essential personnel versus when our civilian volunteers are entitled to legal assistance. Note that legal assistance is also extended to all of these deploying employees family members when they have legal assistance matters related to deployment.

- o **Legal Counseling for Deploying Civilians** - when Aberdeen Proving Ground was AMC's primary central processing deployment center, it was relatively easy for AMCCC to coordinate and help develop the content of the briefing information with the TECOM Legal Office - since TECOM was part of the AMC family. Since APG is no longer in this position (Ft. Benning is currently AMC's CONUS Replacement Center (CRC)), coordinating this effort with a non-AMC activity still requires active participation by AMCCC. We must ensure that our deploying civilians receive the appropriate legal counseling prior to their deployment, regardless of which CRC they deploy from.

- o **HIV Testing of Deploying Civilians** - the current DOD policy is to test deploying civilians only when the country of deployment requires it. Though the DOD policy for civilians is more restrictive than that which can be easily supported by sound legal reasoning, it is an issue that should be readdressed by DOD. It should be noted that the rationale that supports a mandatory testing for military personnel can be used to justify a similar program that screens deploying civilians.

o **Are Our Civilians Combatants, Noncombatants or Something Else?** The term applied to our deploying civilians has been evolving during the past few years. Whereas a few years ago it was Army policy to refer to our civilians taking direct or indirect part in hostilities or accompanying the forces as "combatants,"; recent interpretations of the terms "combatants" and "noncombatants" by the legal communities of the United States and our counterparts in the United Kingdom, Australia and Canada has required us to avoid labeling our civilians "combatants." The Office of the Judge Advocate, International and Operational Law Division, is currently rewriting the Law of Warfare Manual that will articulate the new policy and corresponding terminology (one possible terminology, though lengthy, could be civilians taking direct or indirect part in hostilities or accompanying the forces). Regardless of the term selected, the bottom line is our deploying civilians are susceptible to direct attack while engaged in the performance of their duties; they may be issued self defense weapons at the in-theaters commander's discretion and after appropriate familiarization training. Even if they are carrying a self defense weapon or wearing a uniform, under the Geneva Conventions for Prisoners of War, they are entitled to be protected as Prisoners of War if captured by hostile forces.

o **Changes to the Uniform Code of Military Justice (UCMJ)** - What happens if a deployed civilian commits a crime during that deployment - which criminal law would apply - local law, federal criminal law or the UCMJ? Answer? It depends. What if the local government chooses not to prosecute the civilian and the United States has no extraterritorial jurisdiction over that civilian? Answer? The civilian can't be prosecuted and escapes prosecution.

What does the UCMJ say about this? Article 2,(10) of the UCMJ states that [i]n time of war, persons serving with or accompanying an Armed Force in the field are subject to the UCMJ. The United States Supreme Court has judicially limited the application of Article 2 UCMJ jurisdiction over civilians to periods of war declared by Congress. Though the last Congressionally declared war was World War II, the United States has been deploying civilians and civilian contractors in armed conflicts not involving a declared war (for example, Korea, Vietnam, Grenada, and the Persian Gulf). Concern has been voiced that the UCMJ needs to be changed to provide for increased criminal jurisdiction over civilians in situations even when there is no formal declaration of war, thus, the use of the more general term armed conflict has become the preferred term.

The DOD Authorization Act for FY 1996, Section 1151, mandated that the Secretary of Defense (SECDEF) and the Attorney General (AG) jointly appoint an advisory committee to review and make recommendations concerning the appropriate forum for criminal jurisdiction over civilians accompanying the Armed Forces in the field outside the United States in time of armed conflict. Recommendations are due to the SECDEF and AG no later than 15 December 1996 and a joint report of the advisory committee sent to Congress no later than 15 January 1997. The advisory committee (which includes representatives from the Army, Navy, Marine, Air Force legal communities as well as from the Departments of Justice and State), has completed its fact gathering work and is busy developing the recommendations for the SECDEF and AG. Cassandra Johnson/AMCCC-G/DAN 767-8050/e-mail: tjohnson@hqamc.army.mil

